

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

Case No. 06-14319
Hon. Sean F. Cox

ROCKET ENTERPRISES, INC.,

Defendant.

ORDER

This matter is before the Court on Plaintiff's Motion in limine to strike Defendant's defense that Plaintiff cannot establish a prima facie case. Both parties briefed the issue and a hearing was held January 28, 2008.

Plaintiff argues that based on this Court's ruling in the summary judgment motion and Defendant's failure to argue the prima facie elements outside of causal connection, Defendant is precluded from arguing at trial that Plaintiff cannot establish a prima facie case. Specifically, Plaintiff seeks to preclude Defendant from arguing that Plaintiff was not engaged in protected activity.

Plaintiff's argument is without merit. In ruling on the motion for summary judgment this Court was only ruling, with regard to the issues presented, whether the evidence created an issue of fact. Thus, the ruling that Defendant was not entitled to summary judgment only means that there is an issue of fact. There has been no determination that Plaintiff has established liability

as a matter of law on its claim. Further, the Court was only presented with argument regarding the fourth element of the prima facie case, causal connection. Nothing in the Court's ruling precludes Defendant from presenting evidence at trial regarding Plaintiff's prima facie case. Plaintiff contends that Defendant has somehow conceded that Plaintiff established a prima facie case because it chose not to argue each element in its motion for summary judgment. Plaintiff's argument is unavailing. Defendant is not required to raise all possible arguments in a motion for summary judgment, or lose them. Consistent with the proposed jury instructions and stipulated facts submitted by both parties, Defendant is free to challenge Plaintiff on each element of its claim.

Accordingly, Plaintiff's Motion in limine to strike Defendant's defense that Plaintiff cannot establish a prima facie case is **DENIED**.

IT IS SO ORDERED.

DATED: January 28, 2008

s/ Sean F. Cox
SEAN F. COX
United States District Judge

PROOF OF SERVICE

The undersigned certifies that the foregoing order was served upon counsel of record via the Court's ECF System and/or U. S. Mail on January 28, 2008.

s/Jennifer Hernandez
Case Manager to
District Judge Sean F. Cox